

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 08-CR-012-C-1

STEVEN M. SKOIEN,

Madison, Wisconsin

May 7, 2008

Defendant.

12:40 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF PLEA HEARING
HAD BEFORE THE HONORABLE BARBARA B. CRABB

APPEARANCES:

For the Plaintiff: Office of the United States Attorney
BY: TIMOTHY O'SHEA
Assistant United States Attorney
City Station, Suite 200
660 West Washington Avenue
Madison, Wisconsin 53703

For the Defendant: Federal Defender Services of
Wisconsin, Inc.
BY: MICHAEL LIEBERMAN
222 West Washington Avenue
Suite 300
Madison, Wisconsin 53703

Also Present: Steven M. Skoien, Defendant
Rhonda K. Frank-Loron, Pretrial
Services Officer

CHERYL A. SEEMAN, RMR, CRR
Official Court Reporter
United States District Court
120 North Henry Street, Room 520
Madison, Wisconsin 53703
1-608-255-3821

1 THE CLERK: Case No. 08-CR-12-BBC-1, United
2 States of America versus Steven M. Skoien, called for
3 a plea hearing. May we have appearances, please?

4 MR. O'SHEA: Good afternoon. Tim O'Shea for
5 the United States.

6 THE COURT: Thank you.

7 MR. LIEBERMAN: Good afternoon, Your Honor.
8 Mr. Skoien appears in person with his attorney,
9 Michael Lieberman.

10 THE COURT: Thank you. Mr. Skoien, for the
11 record, how old are you?

12 THE DEFENDANT: 28.

13 THE COURT: How much formal education have
14 you had?

15 THE DEFENDANT: My senior year.

16 THE COURT: Is there any reason why you might
17 not understand what's being said to you today, such as
18 being ill, being on medication, being very tired or
19 being under the influence of any drugs or alcohol?

20 THE DEFENDANT: No.

21 THE COURT: Mr. Lieberman, have you and
22 Mr. Skoien received a copy of the indictment in this
23 case?

24 MR. LIEBERMAN: We have, Your Honor, and we
25 waive reading.

1 THE COURT: Mr. O'Shea, what would be the
2 maximum penalties to which Mr. Skoien would be subject
3 if he is found guilty?

4 MR. O'SHEA: Mr. Skoien is going to plead
5 guilty to the one-count indictment charging a
6 violation of 18 USC Section 922(g)(9). The maximum
7 penalties are a prison term not more than ten years, a
8 \$250,000 fine, a three-year term of supervised release
9 and a \$100 criminal assessment penalty.

10 THE COURT: Did you say 20 years?

11 MR. O'SHEA: Ten.

12 THE COURT: That's what I thought it should
13 be. Okay.

14 MR. LIEBERMAN: Your Honor, as long as we are
15 talking about the indictment, if I could just put one
16 point on the record and I know Mr. O'Shea will cover
17 this later. The indictment lists three separate
18 firearms.

19 Based on discussions with Mr. O'Shea, Mr. Skoien
20 is only going to be pleading guilty to possessing one
21 of the three guns. The other guns were found during a
22 search, but I think the Government now agrees that
23 they won't be able to prove for purposes of sentencing
24 that he possessed any more than the one shotgun he
25 used for hunting.

1 THE COURT: The Winchester Model 120?

2 MR. LIEBERMAN: Yes.

3 THE COURT: Okay.

4 MR. LIEBERMAN: I just wanted to be clear
5 about that.

6 THE COURT: That's right, Mr. O'Shea, as far
7 as you are concerned?

8 MR. O'SHEA: That's right.

9 THE COURT: Okay. Then, Mr. Lieberman, do
10 you know any reason why I should not ask Mr. Skoien
11 what his plea is to the indictment?

12 MR. LIEBERMAN: No, Your Honor.

13 THE COURT: Mr. Skoien, what is your plea to
14 the indictment?

15 THE DEFENDANT: Guilty.

16 THE COURT: Okay. And I understand you are
17 pleading guilty to possessing this one shotgun?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Mr. Lieberman, have you
20 had a chance to talk with Mr. Skoien about any
21 possible defenses that he may have to this charge and
22 about the consequences of pleading guilty?

23 MR. LIEBERMAN: I have, Your Honor.

24 THE COURT: And, Mr. Skoien, have you had
25 enough time to talk with Mr. Lieberman about these

1 matters?

2 THE DEFENDANT: Yes.

3 THE COURT: Would you tell me in your own
4 words what you understand the Government is charging
5 you with doing?

6 THE DEFENDANT: Possessing a firearm after I
7 had been convicted of domestic violence.

8 THE COURT: And the Government says that you
9 possessed that on or about December 3rd, 2007?

10 THE DEFENDANT: Yes.

11 THE COURT: And the Government says that you
12 did it in the Western District of Wisconsin?

13 THE DEFENDANT: Yes.

14 THE COURT: And the Government said that your
15 possession was knowing and unlawful; that is, it
16 wasn't because of a mistake or an accident or because
17 you didn't know what you were doing?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Mr. Skoien, do you
20 understand that if I accept your plea and adjudge you
21 guilty, you could be subject to penalties up to and
22 including the maximum that Mr. O'Shea went over, and
23 that is a maximum of ten years in prison, a fine of as
24 much as \$250,000, three years supervised release and a
25 \$100 criminal assessment penalty and you could be

1 subject to additional time in custody if you violated
2 the terms of your supervised release and were sent
3 back to prison and you could be subject to deportation
4 if you are not a citizen?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that when I
7 sentence you, I can give you any sentence not
8 exceeding the statutory maximum? I will be taking
9 into consideration the sentencing guidelines when I
10 decide what sentence to impose on you.

11 The probation office will calculate the
12 guidelines starting with the number of points
13 attributable to the offense, the fact that you have
14 accepted responsibility by pleading guilty, your role
15 in the offense, your prior criminal record and any
16 other factor that's relevant.

17 And after the probation office has calculated the
18 range, it will submit a recommendation to the Court.
19 Mr. Lieberman and Mr. O'Shea will each have an
20 opportunity to object to the range if they think that
21 it wasn't calculated correctly.

22 I will rule on their objections, I will determine
23 the applicable guideline range and I will probably
24 sentence within that range, but I could give you a
25 higher sentence or a lower one if I believed that such

1 a sentence would better carry out the purposes of
2 sentencing. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that by
5 pleading guilty, you are giving up your right to a
6 trial?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that if you
9 would continue to plead not guilty, you would be
10 entitled to a trial by jury, there would be 12 persons
11 who would serve on the jury and you could help choose
12 the 12 from those who came in for jury selection?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that all 12
15 jurors would have to agree unanimously before they
16 could find you guilty?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that throughout
19 a trial you would be presumed to be innocent and the
20 Government would have the burden of proving beyond a
21 reasonable doubt that you committed this offense?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that at a trial
24 you would have the right to cross-examine the
25 witnesses against you through your counsel; you would

1 have the right to testify in your own behalf if you
2 chose to, but you couldn't be required to testify; you
3 would have the opportunity to present testimony and
4 other evidence in your defense and you could compel
5 the attendance of witnesses?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that you have a
8 right to court-appointed counsel at government expense
9 through all stages of this proceeding?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that under the
12 Constitution of the United States, no one can be
13 forced to admit that he or she has committed a crime?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that when you
16 plead guilty, you are giving up that right against
17 incriminating yourself?

18 THE DEFENDANT: Yes.

19 THE COURT: And, Mr. O'Shea, would you state
20 for the record the terms of the agreement you have
21 reached with the defense?

22 MR. O'SHEA: Yes, Your Honor. In paragraph
23 1, the defendant has agreed to plead guilty to Count
24 1.

25 Paragraph 2 is a subset of the trial rights that

1 the defendant acknowledges that he is giving up, a
2 subset of the rights that the Court has just gone
3 over, but there is an important addition, and that is
4 the last couple of sentences of paragraph 2 where it
5 indicates that Mr. Skoien has reserved his right to
6 appeal an adverse determination of his motion to
7 dismiss the indictment under the Federal Rules of
8 Criminal Procedure. And Mr. Skoien understands that
9 if he prevails on that motion to dismiss the
10 indictment on appeal that the United States recognizes
11 that he can withdraw his guilty plea.

12 In paragraph 3, Mr. Skoien indicates his
13 understanding that there could be evidence in the case
14 that could be subjected to DNA testing and that he
15 could petition the Court for post conviction testing
16 of that evidence, but he has waived by his signature
17 the right to post conviction DNA testing of all
18 evidence.

19 Paragraph 4: The United States agrees that
20 Mr. Skoien's guilty plea will completely resolve all
21 possible federal criminal violations that have
22 occurred here in the Western District so long as it
23 relates to the conduct described in the indictment and
24 it was known to the Government as of the date of the
25 plea agreement. Of course the agreement is limited to

1 those types of cases for which my office has exclusive
2 decision-making authority.

3 Mr. Skoien understands that I will provide my
4 full file to the probation office for the probation
5 office to use in preparing the presentence report.

6 The Government will recommend to the Court that
7 he -- in paragraph 5, the Government will recommend
8 that the Court, in determining Mr. Skoien's sentence,
9 to give him the maximum available reduction for
10 acceptance of responsibility of this as long as the
11 defendant in fact has and continues to accept
12 responsibility.

13 In paragraph 6, Mr. Skoien has agreed to complete
14 a financial statement and return it to my office
15 within one week. He also agrees that the probation
16 office may disclose financial information that they
17 get from the defendant in connection with the
18 preparation of the presentence report.

19 Paragraph 7: In the event of an appeal, the
20 Government reserves the right to make arguments in
21 support of or in opposition to the sentence imposed by
22 the Court.

23 Paragraph 8: Mr. Skoien understands that any
24 sentencing discussions that Mr. Lieberman and I have
25 had are not part of the plea agreement and that he

1 should not rely upon the possibility of a particular
2 sentence based on those discussions.

3 Paragraph 9: By Mr. Skoien's signature, he
4 acknowledges his understanding that the Government has
5 made no promises or guarantees concerning the
6 sentence. And as he has already told the Court, he
7 acknowledges his understanding that the Court is not
8 required to accept recommendations and that the Court
9 can impose a sentence up to and including the maximum
10 penalties set out in page 1.

11 This plea agreement has been approved by my
12 office and this is the plea agreement of the United
13 States.

14 THE COURT: Thank you. Mr. Lieberman, is
15 that your understanding of the agreement?

16 MR. LIEBERMAN: It is, Your Honor.

17 THE COURT: And, Mr. Skoien, is it your
18 understanding of the agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Did anyone make you any other
21 promises to get you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Did anyone threaten you or force
24 you to plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: Did anyone tell you that you are
2 going to get a particular sentence?

3 THE DEFENDANT: No.

4 THE COURT: Do you understand that you are
5 not free to withdraw your plea of guilty even if I do
6 not accept the Government's recommendations?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. O'Shea, what would you have
9 been prepared to prove had the case gone to trial?

10 MR. O'SHEA: The United States would have
11 introduced a copy of Mr. Skoien's December 19th
12 judgment where he his convicted of misdemeanor
13 domestic battery in violation of Wisconsin law.

14 The United States would have called Special Agent
15 Bill Baudhuin from ATF to testify that the Winchester
16 Model 120 12-gauge shotgun was manufactured in New
17 Haven, Connecticut and consequently moved in
18 interstate commerce, arrived here in Wisconsin.

19 Next we would have called Janesville Police
20 Department Officer Todd Bailey who would explain that
21 he assisted in a probation search conducted by
22 Wisconsin Probation and Parole Officer Mary Wendel
23 based on an alert from the DNR that basically
24 indicated Mr. Skoien here had purchased a deer gun
25 hunting license. Probation Officer Wendel had been

1 supervising Mr. Skoien for that misdemeanor conviction
2 that followed Mr. Skoien's physical dispute with his
3 wife.

4 So Officer Bailey went to the defendant's home,
5 and that's at 1634 Garden Drive in Janesville in the
6 Western District of Wisconsin. That is a home that
7 Mr. Skoien shared with his wife, Mrs. Skoien, and a
8 friend, Darin Rudolph. In the basement, the probation
9 officers recovered the two weapons that are not the
10 basis for the plea; that is, the hunting rifle and the
11 pistol mentioned in the indictment.

12 Mr. Rudolph, however, also said that there was a
13 shotgun in his pickup truck outside. Later he told
14 Officer Bailey that the shotgun was in fact
15 Mr. Skoien's and gave Officer Bailey permission to go
16 and retrieve that firearm, the 12-gauge shotgun. And
17 in fact, in Mr. Rudolph's truck Officer Bailey found
18 the 12-gauge shotgun that is mentioned in Count 1 of
19 the indictment, also found Mr. Skoien's hunting coat
20 with a hunting tag on it and ten 12-gauge slugs in the
21 pockets.

22 At the same day there was a series of calls from
23 the Rock County Jail. The defendant was taken to the
24 Rock County Jail based on what was perceived to be a
25 probation violation. Mr. Skoien called his wife that

1 afternoon. He had some pretty crabby things to say
2 about Mr. Rudolph letting the officers search his
3 truck, but then during that conversation Mr. Skoien
4 commented saying, "They knew mine was in Rudy's
5 truck." That's because Rudy let them search his
6 vehicle.

7 And then a couple weeks after that, December
8 20th, 2007, and I would next call DNR Warden Michael
9 Dieckhoff who went to go talk with Mr. Skoien at the
10 Rock County Jail. And after going over Mr. Skoien's
11 rights, Mr. Skoien admitted that he killed a
12 particular deer that fall with the Winchester 12-gauge
13 shotgun.

14 So those are the facts the United States would
15 rely upon to prove the violation as alleged in the
16 indictment.

17 THE COURT: Thank you. Mr. Lieberman, from
18 what you know about the case, is there anything
19 Mr. O'Shea has gone over that you think he could not
20 prove at trial?

21 MR. LIEBERMAN: Nothing, Your Honor.

22 THE COURT: And, Mr. Skoien, is there
23 anything that you think he could not prove at trial?

24 THE DEFENDANT: No.

25 THE COURT: Would you tell me in your own

1 words what happened on December 3rd, 2007?

2 THE DEFENDANT: I had come back from hunting
3 and my probation officer called and wanted me to stay
4 at home because she said she had to come over to talk
5 to me. She come over with, I believe, eight probation
6 agents and the Janesville Police Department.

7 They searched my roommate's room and found the 25
8 pistol, the 308. They proceeded to check the rest of
9 the house and then Darin told them about the 12-gauge
10 in the truck and that's pretty much it. They put me
11 in handcuffs and took me to jail.

12 THE COURT: And that was your gun in the
13 truck?

14 THE DEFENDANT: Yes.

15 THE COURT: Then on the basis of this
16 discussion with you and your attorney and upon the
17 basis of the entire record in the case, I find and
18 conclude that you have entered a plea of guilty
19 knowingly, understandingly and voluntarily after an
20 adequate opportunity to consult with your attorney,
21 with an understanding of the nature of the charge and
22 with an understanding of the consequences of a plea of
23 guilty. I'm satisfied there is a factual basis for
24 the plea.

25 Accordingly, I find and adjudge you guilty of the

1 charge contained in the indictment. I accept the plea
2 agreement conditionally pending review of the
3 presentence report. And that report is to be filed no
4 later than June 11th, objections are due June 25th and
5 the sentencing date will be July -- I will say 18th.
6 Is that open?

7 MR. O'SHEA: Works for the United States,
8 Your Honor. What time?

9 THE CLERK: 1:20.

10 THE COURT: 1:20 on July 18th.

11 MR. LIEBERMAN: That's fine, Your Honor.
12 Thank you.

13 THE COURT: Anything further in this matter?

14 MR. O'SHEA: From the Government's
15 perspective, there is no reason to reconsider the
16 release conditions.

17 MR. LIEBERMAN: And I would agree with that,
18 Your Honor.

19 THE COURT: Okay. Then, Mr. Skoien, just so
20 that you know, you are still subject to the same bail
21 conditions that the magistrate judge imposed on you.

22 MR. LIEBERMAN: Thank you, Your Honor.

23 THE DEFENDANT: Thank you.

24 (Adjourn at 1:00 p.m.)
25

1 I, CHERYL A. SEEMAN, Certified Realtime and
2 Merit Reporter, in and for the State of Wisconsin,
3 certify that the foregoing is a true and accurate
4 record of the proceedings held on the 7th day of May,
5 2008, before the Honorable Barbara B. Crabb, Chief
6 Judge of the Western District of Wisconsin, in my
7 presence and reduced to writing in accordance with my
8 stenographic notes made at said time and place.
9 Dated this 13th day of November, 2008.

10
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12
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14
15 _____ /s/

16 Cheryl A. Seeman, RMR, CRR
17 Federal Court Reporter
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